

FILED
DISTRICT COURT OF GUAM

AUG - 8 2005 *9P*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CRIMINAL CASE NO. 05-00053
)	
Plaintiff.)	
)	
vs.)	
)	
CHRISTOPHER M. ESPINOSA,)	ORDER
)	
Defendant.)	

This case came before the Court on August 5, 2005, on the Defendant's motion to reconsider the Court's detention order. For the reasons set forth below, the Court hereby DENIES the Defendant's motion and ORDERS his continued detention pending trial.

FACTS

On June 22, 2005, the Defendant and three others were indicted by the grand jury and charged with Conspiracy to Distribute Methamphetamine Hydrochloride and Attempted Possession of Methamphetamine Hydrochloride with Intent to Distribute. The offenses involved a drug quantity over 100 grams. A bench warrant for the Defendant was subsequently issued by the Court.

On June 23, 2005, the Defendant made his Initial Appearance in the United States District Court for the District of Nevada. On June 28, 2005, a detention hearing was held in the District of Nevada. Following the detention hearing, the Honorable Lawrence R. Leavitt, United

1 States Magistrate Judge, ordered the continued detention of the Defendant based on the
2 following findings:

3 The [D]efendant is charged with an offense which under the Bail Reform
4 Act gives rise to a presumption that he is both a significant risk of non-appearance
5 and danger to the community such that he should be detained.

6 The Defendant has not provided any evidence or information to rebut the
7 presumption even after having been interviewed by Pretrial Services and after
8 Pretrial Services Agency was able to supplement its view of the [D]efendant's
9 criminal history.

10 The [D]efendant has nine (9) outstanding Bench Warrants, six (6) of
11 which are traffic-related offenses occurring on two separate dates. This suggests
12 to the Court that the [D]efendant does not have any sense of responsibility to
13 respond to the Orders of the Court.

14 In Las Vegas, the [D]efendant failed to appear on a misdemeanor matter
15 for an Arraignment before a Justice of the Peace in 2004, a Bench Warrant was
16 issued, and remains outstanding.

17 See Order of Detention Pending Trial, Docket No. 18.

18 On July 18, 2005, the Defendant made his Initial Appearance in this district before
19 Designated Judge Frances M. Tydingco-Gatewood. The Pretrial Services Report recommended
20 the detention of the Defendant, and the Government concurred in said recommendation. The
21 defense counsel said that a separate bail motion would be brought at a latter date when he could
22 obtain further information from the Defendant and his family. Based on the presumption of
23 detention, the Court detained the Defendant.

24 On July 22, 2005, the Defendant filed the instant motion to reconsider the Court's
25 detention order. See Docket Nos. 23-24.

26 On August 3, 2005, Judge Tydingco-Gatewood directed the below-signed Magistrate
27 Judge to hear the instant motion and determine whether the Defendant should now be released.
28 See Docket No. 28.

29 ANALYSIS

30 Federal law presumes the pretrial release of a defendant on personal recognizance or
31 upon execution of an unsecured appearance bond unless the judicial officer determines that such
32 release will not reasonably assure the appearance of the person as required or will endanger the
33 safety of any other person or the community. 18 U.S.C. § 3142(b). Furthermore, in determining
34 whether there are conditions of release that will reasonably assure the appearance of the

defendant and the safety of the community, the Court must consider the following factors:

- (1) The nature of the circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including –
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g). Of these factors, the weight of the evidence is the least important, and the statute neither requires nor permits a pretrial determination of guilt. United States v. Winsor, 785 F.2d 755, 757 (9th Cir.1986).

Although there is a presumption of release, the law also provides that subject to rebuttal by the defendant, "it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community if . . . there is probable cause to believe that the [defendant] committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act." 18 U.S.C. § 3142(e). The indictment itself is sufficient to support a finding of probable cause. United States v. Suppa, 799 F.2d 115, 119 (3d Cir.1986); United States v. Harris, 732 F. Supp. 1027, 1033 (N.D. Cal.1990). This statutory presumption merely shifts the burden of production of evidence to the defendant. United States v. Mesher, 707 F. Supp. 1224, 1225 (D. Or.1989); United States v. Moore, 607 F. Supp. 489, 497 (N.D. Cal.1985). The Government still retains the ultimate burden of persuasion, Mesher, 707 F. Supp. at 1225, and the burden placed on the defendant to rebut the presumption is small. United States v. Dillon, 938 F.2d 1412, 1416 (1st Cir. 1991). The defendant need only put forth "some credible evidence forming a basis for his contention that he will appear and not pose a threat to the community in order to rebut the presumption." United States v. Thomas, 667 F. Supp. 727, 728 (D. Or. 1987); Dillon, 938 F.2d at 1416.

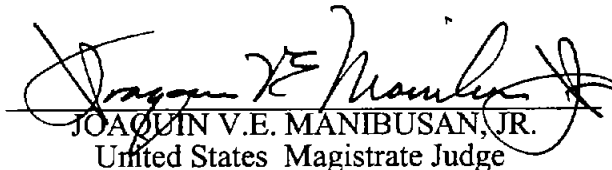
1 In this instance, the offenses charged in the Indictment involve violations of the
2 Controlled Substances Act. The drug quantity alleged is over 100 grams of methamphetamine
3 hydrochloride which carries a mandatory minimum of 10 years imprisonment with a maximum
4 of life imprisonment. Thus, the presumption that no condition or combination of conditions will
5 reasonably assure the appearance of the Defendant and the safety of the community applies to
6 the Defendant.

7 The burden now shifts to the Defendant to produce some credible evidence forming the
8 basis for his contention that he will appear at all court hearings and not pose a threat to the
9 community. The Defendant has proposed a third party custodian, Anthony C. Lujan whom the
10 United States Probation Office ("USPO") finds acceptable. Additionally, the USPO has
11 determined that Mr. Lujan's residence is suitable for the installation of the electronic monitoring
12 system. Nevertheless, the USPO still has concerns about the risk of future non-appearances by
13 the Defendant. Specifically, the USPO's report indicates that in 1999 the Defendant had a
14 pending felony case in the Superior Court of Guam. Prior to disposition of the case and while on
15 pretrial release, the Defendant left Guam and failed to return. Thus, the Superior Court of Guam
16 issued a warrant for the Defendant's arrest in October 2000, which remains outstanding.
17 Furthermore, information received from probation officer Carleen Borja, although not
18 specifically contained in the USPO's report, revealed that the Superior Court had given its
19 permission for the Defendant to go on a short vacation to the mainland United States with Mr.
20 Lujan. However, while they were traveling together, the Defendant ran off from Mr. Lujan.
21 Thus, Mr. Lujan returned to Guam without the Defendant, informed the Superior Court about the
22 Defendant's disappearance, and the Superior Court issued a warrant for the Defendant's arrest.
23 The Court is further advised that prior to the Defendant's return to Guam last month following
24 his arrest in Las Vegas, Mr. Lujan had only sporadic contact (possibly one or two telephone
25 calls) with the Defendant over the past years.

26 In addition to the fact that the Defendant stayed away from this jurisdiction to avoid
27 prosecution, the report also indicates that the Defendant has numerous warrants in Las Vegas
28 outstanding because of his failures to appear at judicial proceedings in that jurisdiction.

1 This Court is as concerned as Judge Leavitt was about the Defendant's risk of flight. The
2 fact that Mr. Lujan is willing to act as the Defendant's custodian does not alleviate the Court's
3 concerns. The Defendant ran away from Mr. Lujan once before, and there are no assurances that
4 the Defendant will not flee from this jurisdiction again in order to avoid prosecution and trial.
5 Additionally, the Court can not be assured that the Defendant will appear at all future court
6 hearings when he did not appear for court proceedings in the Superior Court and Las Vegas. The
7 Defendant's history indicates that he lacks the responsibility to abide by court orders imposed
8 upon him. He was not even responsible enough to return to Guam to face the charges against
9 him. Because the Defendant has not met his burden of rebutting the presumption that no
10 condition or combination of conditions will reasonably assure his appearance, the Court
11 DENIES the Defendant's motion and ORDERS the continued detention of the Defendant
12 pending trial.

13 SO ORDERED this 8th day of August 2005.

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16 JOAQUIN V.E. MANIBUSAN, JR.
United States Magistrate Judge
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